

THE STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

Plaintiff,

v.

PARKING ENFORCEMENT SERVICES, INC.  
AND BRIAN O'TOOLE

Defendants.

NO. **07-2-05711-SEA**

CONSENT DECREE RESOLVING  
STATE'S CLAIMS OF CONSUMER  
PROTECTION ACT VIOLATIONS,  
RCW 19.86.020

(CLERK'S ACTION REQUIRED)

**I. JUDGMENT SUMMARY**

- 1.1. **Judgment Creditor:** State of Washington
- 1.2. **Judgment Debtors:** Parking Enforcement Services, Inc. and Brian O'Toole
- 1.3. **Principal Judgment Amount:** \$60,000.00 (\$10,000 suspended based on compliance with all terms of this consent decree).
- a. **Restitution:** \$50,000.00
- b. **Civil Penalties:** \$10,000.00 (suspended on compliance with all terms of this consent decree)
- 1.4. **Costs & Attorneys Fees:** \$10,000.00
- 1.5. **Total Judgment:** \$70,000.00 (\$10,000 suspended on compliance with all terms of this consent decree).
- 1.6. **Post Judgment Interest Rate:** Twelve percent (12%) per annum

CONSENT DECREE RESOLVING  
STATE'S CLAIMS OF CONSUMER  
PROTECTION ACT VIOLATIONS

COPY



1 Defendants further agree that they will not oppose the entry of this consent decree on the  
2 grounds it fails to comply with Rule 65(d) of the Rules of Civil Procedure and hereby waive any  
3 objections based thereon; and

4 Defendants further agree that this court shall retain jurisdiction of this action for the purpose  
5 of implementing and enforcing the terms and conditions of the consent decree and for all other  
6 purposes; and

7 The Court finding no just reason for delay;

8 **NOW, THEREFORE,** it is hereby **ORDERED, ADJUDGED, AND DECREED** as  
9 follows:

## 10 II. GENERAL

11 **2.1. Jurisdiction.** This court has jurisdiction of the subject matter of this action and of  
12 the parties. The Plaintiff's complaint states claims upon which relief may be granted under the  
13 provisions of the Consumer Protection Act, Chapter 19.86 RCW.

14 **2.2. Defendants.** For purposes of this consent decree, the term "Defendant" or  
15 "Defendants," where not otherwise specified, shall mean PARKING ENFORCEMENT  
16 SERVICES, INC., and BRIAN O' TOOLE.

## 17 III. INJUNCTIONS

18 **3.1. Application of Injunctions.** The injunctive provisions of this consent decree shall  
19 apply to the Defendants, and the Defendants' successors, assigns, officers, agents, servants,  
20 employees, representatives, and all other persons or entities in active concert or participation with  
21 the Defendants.

22 **3.2. Notice.** Defendants shall immediately inform all successors, assigns, transferees,  
23 officers, agents, servants, employees, representatives, and all other persons or entities in active  
24 concert or participation with Defendants or with the corporations named as Defendants in the  
25 complaint of the terms and conditions of this consent decree.

3.3. Injunctions. Defendants and all successors, assigns, transferees, officers, agents, servants, employees, representatives and all other persons or entities in active concert or participation with Defendants are hereby permanently enjoined and restrained from directly or indirectly engaging in the following acts or practices in the state of Washington and from failing to comply with the provisions of the Consumer Protection Act, Chapter 19.86 RCW, as they are currently written or as they are amended in the future, including but not limited to:

a. Misrepresenting Defendants' authority to act as law enforcement, including representing that Defendants are authorized to enforce trespassing laws or issue parking "tickets" or "citations;"

**b. Making misrepresentations in efforts to collect payment for parking;**

c. Attempting to enforce contracts without adequate disclosure of all material terms; and

d. Attempting to collect on any “tickets” it wrote on or before the date of entry of this consent decree.

#### IV. RESTITUTION

4.1. Pursuant to RCW 19.86.080, Defendants hereby agree to provide consumer restitution. Prior to entry of this Consent Decree Defendants will deposit \$20,000.00 in an account for the purposes of paying restitution and provide proof of such deposit to the Attorney General. Defendants agree that beginning March 1, 2007, they will pay a minimum of \$3,000.00 monthly into the restitution account until the total of the account equals \$50,000.00. The Defendants will provide the Attorney General with proof of each deposit. The Attorney General agrees that the restitution account will be administered and retained by Defendants' counsel, James Aiken. In the event James Aiken is unable to fully serve as administrator, Defendants agree that the Attorney General may identify another individual to serve in the capacity of administrator.

1           a.       Defendants shall send notice of this restitution at their sole expense within  
2 45 days of entry of this consent decree and via First-Class Mail to all who appealed one of  
3 Defendants' "tickets." The notice shall be in a form agreed to in writing by the Attorney General's  
4 Consumer Protection Division. The notice shall advise those who appealed tickets that they are  
5 entitled to a refund if they paid any money for a ticket which they disputed, in writing, through  
6 Defendants' appeals process. Further, the notice will advise that if the ticket was appealed and  
7 unpaid, Defendants will take no additional action to collect on the ticket and that Defendants have  
8 withdrawn the ticket. The notice will state that a restitution fund has been created and the fund will  
9 be divided on a pro rata basis to all claimants who paid disputed tickets. The notice will state that  
10 the restitution will be paid on or before July 15, 2007.

11           b.       Those who receive the notice will have 45 from the date the notices were  
12 mailed to make a claim. The deadline date must appear clearly on the claim notification. Only  
13 claimants who actually paid disputed tickets will be eligible for restitution. Once the 45 day claim  
14 period has passed, the administrator will verify all claims and the dollar amount each claimant paid.  
15 The administrator will provide a summary of all claims payable, dollar amounts paid, and mailing  
16 addresses, to both Defendants and the Attorney General. Once the summary is provided, all parties  
17 will have two weeks to bring any relevant information to the attention of the administrator who  
18 shall then make adjustments and provide a final summary of claims payable to all parties.  
19 Defendants agree to provide the administrator with all information necessary for the administrator  
20 to determine whether a claim is valid, including providing their bank records. If Defendants dispute  
21 any claim or claims that the Attorney General believes to be valid, Defendants agree to pay for a  
22 third party arbitrator to resolve all such disputes at their sole expense. Once a final summary of  
23 claims has been created, the administrator will then determine his fees for administering the  
24 restitution plan (which shall not exceed \$7000.00) and the mailing costs to be incurred in sending  
25 the refunds to all claimants and will reserve that amount from the restitution fund and then will  
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1 determine the pro rata refund amount due each claimant and provide that final report to all parties.  
2 The administrator will then cause the refunds to be prepared and mailed no later than July 15, 2007.  
3 No later than thirty days after mailing all refunds, the administrator will provide a final report of all  
4 restitution paid. The administrator will then pay his fees from the fund. In the event any funds  
5 remain in the restitution fund after all claims have been paid and the administrator has been paid as  
6 allowed by this paragraph, the administrator will return any funds remaining in the restitution fund  
7 to the Defendants.

8       **4.2** In the event Defendants have not fully funded the restitution fund by July 15, 2007,  
9 the administrator will not be entitled to collect his fees from the restitution fund, but Defendants  
10 will remain liable to pay the administrator for those fees, and interest will begin accruing on the  
11 unpaid balance at twelve percent per annum. Defendants will also remain liable for paying an  
12 administrator to distribute any shortfall that has not been paid into the restitution fund in time to be  
13 distributed by July 15, 2007, at such time the fund is finally fully funded. Defendants will be liable  
14 for twelve percent per annum on any amount of restitution that has not been deposited into the  
15 restitution fund before July 15, 2007, and claimants will be entitled to receive a pro rata share of  
16 that interest. This means that if Defendants do not fully fund the restitution fund by July 15, 2007,  
17 and the amount deposited into the fund by that date does not fully satisfy all restitution claims,  
18 consumers will be entitled to receive one refund check by July 15, 2007 and another, including the  
19 twelve percent interest, at such time Defendants pay the amount remaining to total \$50,000.00 paid  
20 into the restitution fund.

21       **4.3.** Defendants agree that if they fail to identify to the administrator any person who  
22 would have been eligible for restitution had he or she been properly identified to the administrator  
23 at the outset, they will immediately and as soon as the oversight is brought to Defendant's attention  
24 issue a refund for the full amount paid by the claimant, plus interest in the amount of twelve percent  
25  
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1 per annum starting from July 15, 2007. Defendants agree that failure to comply with this paragraph  
2 will constitute a violation of an injunction for which paragraph 8.1 remedies shall apply.

3 **V. CIVIL PENALTIES**

4 **5.1.** Pursuant to RCW 19.86.140, Plaintiff shall have and recover and Defendants shall  
5 be liable for and shall pay civil penalties of \$10,000; however, these penalties are suspended  
6 conditioned on compliance with the provisions of this consent decree.

7 **5.2.** Interest on any unpaid balance of civil penalties shall accrue in the amount of twelve  
8 percent (12%) per annum.

9 **5.3.** In the event that Defendants default per Section VII "TERMS OF PAYMENT" in  
10 the payment of the total consent decree balance, Defendants agree that all civil penalties will be  
11 unsuspended and immediately become due and payable.

12 **VI. ATTORNEY'S FEES AND COSTS**

13 **6.1.** Pursuant to RCW 19.86.080, Plaintiff shall recover and Defendants shall pay the  
14 costs and reasonable attorney's fees incurred by the Plaintiff in pursuing this matter in the amount of  
15 \$10,000. This payment is due no later than September 28, 2007.

16 **6.2.** Interest on any unpaid balance shall accrue in the amount of twelve percent per  
17 annum.

18 **6.3.** The Defendants shall bear Plaintiff's reasonable costs, including reasonable  
19 attorneys' fees, for enforcing this consent decree in any successful action to enforce any of its  
20 provisions.

21 **VII. TERMS OF PAYMENT**

22 **7.1.** The judgment amount of \$60,000 is to be paid in full by September 28, 2007.  
23 \$20,000.00 shall be paid into the restitution fund before entry of this Consent Decree, with  
24 \$3,000.00 per month due the first day of each subsequent month until the fund reaches a total of  
25 \$50,000.00. \$10,000 is to be paid to the Attorney General as required by paragraph VI, above, on  
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or before September 28, 2007. In the event that any money remains in the restitution fund after all claims have been paid in full, the administrator will return the remaining amount to the Defendants, in equal parts.

**7.2.** All payments to the Attorney General shall be made by cashier's check payable to the Attorney General - State of Washington, and shall be delivered to the Office of the Attorney General, 800 Fifth Avenue, Suite 2000, Seattle, Washington, 98104-3188, Attention: Cynthia Lockridge, Office Manager.

## VIII. ENFORCEMENT

**8.1.** Violation of any of the terms of this consent decree shall constitute a violation of an injunction for which civil penalties of up to \$25,000 per violation may be sought by the Attorney General pursuant to RCW 19.86.140.

**8.2.** The violation of any of the injunctive terms of this consent decree shall constitute a violation of the Consumer Protection Act, RCW 19.86.020.

**8.3.** Jurisdiction is retained for the purpose of enabling any party to this consent decree with or without the prior consent of the other party to apply to the Court at any time for enforcement of compliance with this consent decree, to punish violations thereof, or to modify or clarify this consent decree.

8.4. Representatives of the Office of the Attorney General shall be permitted, upon ten (10) days' notice to Defendants, to access, inspect, and/or copy all business records or documents under control of Defendants in order to monitor compliance with this consent decree, provided that the inspection and copying shall be done in such a way as to avoid disruption of Defendants' business activities.

8.5. Representatives of the Office of the Attorney General may be permitted to question the Defendants or any officer, director, agent, or employee of any Defendant to this complaint by



1 deposition, pursuant to the provisions of CR 30, in order to monitor compliance with this consent  
2 decree.

3 8.6. Nothing in this consent decree shall be construed as to limit or bar any other  
4 governmental entity or consumer from pursuing other available remedies against Defendants.

5 8.7. Under no circumstances shall this consent decree or the name of the State of  
6 Washington, the Office of the Attorney General, Consumer Protection Division, or any of their  
7 employees or representatives be used by any Defendant named in the complaint in connection with  
8 any selling, advertising, or promotion of products or services or as an endorsement or approval of  
9 defendants' acts, practices, or conduct of business.

10 8.8. This proceeding in all other respects is hereby dismissed with respect to Defendants  
11 and this consent decree is entered pursuant to RCW 19.86.080.


12 ORDERED IN OPEN COURT this \_\_\_\_\_ day of **FEB 12 2007**, 2007.

13  
14 **CARLOS VELATEGUI**

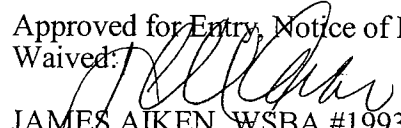
15 **JUDGE/COURT COMMISSIONER**

16 Approved for entry and presented by:

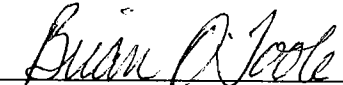
17 ROBERT M. MCKENNA  
18 Attorney General

19   
20 CHERYL D. KRINGLE, WSBA #32443 for  
21 Assistant Attorney General  
22 Attorneys for Plaintiff  
23 State of Washington

Approved for Entry, Notice of Presentation  
Waived:

24   
25 JAMES AIKEN, WSBA #1993  
26 Attorney for Defendants Brian O'Toole and  
Parking Enforcement Services, Inc.

27   
28 BRIAN O'TOOLE, individually

29   
30 PARKING ENFORCEMENT SERVICES,  
31 INC.